

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 161

The question is whether a hearings officer who is also chief of a division of a City agency which conducts public hearings may properly participate in a hearing when he is the spouse of one of the consultants retained by the applicant.

The Ethics Commission's [Commission's] opinion is based on the following facts:

1. After a hearing had been scheduled and notice given in an application for a permit, the scheduled hearings officer informed the agency head that he was unable to be present and the subject hearings officer was asked to assist.
2. Under the established procedures the public hearings officer acts only as a moderator to ensure the orderly presentation of all public testimony concerning the application at issue. The officer makes no substantive decisions regarding the merits of the application nor does the officer make any recommendations concerning the merits of the application. It is the duty of the hearings officer only to transmit information.
3. The applicant at the hearing in question retains several consultants, only one of whom is the spouse of the hearings officer.
4. The hearings officer's spouse is an engineer employed by the applicant to work under supervision in preparing preliminary design plans for specific projects. The spouse was not assigned to and did not work on the project under consideration by the City agency.
5. The applicant did testify at the public hearing moderated by the subject hearings officer in favor of the application. The spouse of the hearings officer was not present.

As head of a City agency division the hearings officer must conform to standards of conduct required of all officers as defined by Revised Charter of Honolulu 1973 (1983 Ed.) [RCH] Article XIII, Section 13-101.4(d), which states:

4. Except as otherwise provided in this charter, the term 'officer' shall include the following:

. . . .

(d) The first deputy or a division chief appointed by the administrative head of any agency of the city.

The relevant standards of conduct are set out in RCH Article XI and Revised Ordinances of Honolulu 1978 [ROH] Chapter 6, Article 1.
In particular, RCH Section 11-102.3 states:

No elected or appointed officer or employee shall:

. . . .

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

RCH Section 11-104 states:

Section 11-104. Fair and Equal Treatment -- No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

ROH Section 6-1.2(1) provides:

Section 6-1.2. Additional Standards of Conduct.

No officer or employee of the City, except as hereinafter provided shall:

(1) Participate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which (A) he has a substantial financial interest; or (B) by or for which a firm of which he is a member, an associate, or an employee has been engaged as a legal counsel or advisor or consultant or representative in a matter directly related to such action; provided that a councilman is not precluded from voting on such matter before the Council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter.

The subject hearings officer has a financial interest in the applicant's business by reason of his spouse's employment. The hearings officer filed a disclosure of financial interest, as required by ROH, Section 6-1.4(a)(1), with the Commission indicating his spouse's employment.

However, for the following reasons, the Commission finds there is no conflict of interest or violation of the standards of conduct involved in this case:

1. The spouse of the hearings officer works under another engineering supervisor. Thus, his spouse makes no final decisions concerning any designs prepared by the applicant.
2. In any case, his spouse was not involved in preparing designs for this application. His spouse's employment by the applicant does not depend on whether the present application is granted.
3. The hearings officer had no decision-making authority in connection with the applicant's request for a permit. Neither was he in a position to influence the outcome of the hearing, as his official duty was to make sure everyone who wished to present testimony had the opportunity to do so. In fact, at the hearing, he extended the opportunity to present testimony to anyone in the room whether or not they had made an official prior request to do so.

Thus, the hearings officer did not use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person. In addition, the hearings officer had fully complied with the requirements of RCH Section 11-103 and ROH Section 6-1.4. Neither the proper discharge of the hearings officer's official duties nor his independence of judgment in the performance of his official duties was impaired by his acting as moderator at the public hearing on the application for a permit.

Date: April 14, 1986

GILBERT A. GIMA
Chair, Ethics Commission